

KENNETH HEARNS

March 15, 2005

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1 Q. In 2001?

2 A. Uh-huh.

3 Q. Let me see if I can get the date  
4 here. July 14, 2001. Does that sound like it  
5 might be the date?

6 A. Yes, it does.

7 Q. Did you see Mario Lacy on that  
8 date?

9 A. Yes.

10 Q. And where did you see him?

11 A. On Marvin Street.

12 Q. And what was he doing?

13 A. Making a drug deal.

14 Q. And you saw him making the drug  
15 deal?

16 A. Yes, sir.

17 Q. And who were you with?

18 A. Myself. Alone.

19 Q. Just alone?

20 A. Just alone.

21 Q. And how did you know he was making  
22 a drug deal?

23 A. I watched him.

24 Q. And what was he doing?

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1           A.           Took money from a guy, gave the guy  
2 a small object.

3           Q.           Did you see what the object was?

4           A.           No, I did not.

5           Q.           So you could have arrested him at  
6 that point?

7           A.           Yes, I could have.

8           Q.           And why didn't you?

9           A.           Because there -- it was a  
10 confidential informant who he -- was buying it  
11 from him.

12          Q.           But could you still arrest him then  
13 decide later whether you were going to prosecute.

14          A.           No.

15          Q.           Why not?

16          A.           Because the informant was out there  
17 working with us.

18          Q.           But nothing prevented you from  
19 arresting him for buying from an informant.

20          A.           Yes, I did. She was an informant.

21          Q.           No. Technically, you could have  
22 arrested --

23          A.           No, sir. She was an informant.

24          Q.           So you can't arrest someone for

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1 A. No, sir.

2 Q. So what did you do then?

3 A. Watched him.

4 Q. And what did he do?

5 A. I saw him go back up Marvin Street  
6 towards Washington Street out of my view.

7 Q. Was there anybody else with him?

8 A. No.

9 Q. Did you see him with another  
10 individual?

11 A. No, sir. I did not.

12 Q. And he went where?

13 A. Back to Washington Street.

14 Q. And what happened then?

15 A. Out of my view. I lost sight of  
16 him.

17 Q. Then what happened? Did you see  
18 him again?

19 A. Then he came back down Marvin  
20 Street again toward the dumpster area.

21 Q. Was he alone?

22 A. Yes, he was.

23 Q. And what happened then?

24 A. He went the dumpster again -- the

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1 same area -- reached into the dumpster again,  
2 went out of the dumpster, out of the parking lot,  
3 back up Marvin Street towards Washington where  
4 Jay Broderick and Juan Seoane stopped him.

5 Q. Two other police officers in the  
6 drug control unit?

7 A. Yes, sir.

8 Q. They actually stopped him? Where  
9 was that?

10 A. On the side of the bank.

11 Q. And what were the bases of their  
12 stopping him?

13 MR. CHERNETSKY: Objection.

14 THE WITNESS: Thought that he might  
15 had drugs on him.

16 Q. (By Mr. Hrones) So they had  
17 grounds to arrest him at that point?

18 MR. CHERNETSKY: Objection.

19 THE WITNESS: No, sir.

20 Q. (By Mr. Hrones) What was the basis  
21 for them stopping him?

22 MR. CHERNETSKY: Objection.

23 THE WITNESS: Threshold inquiry.

24 Q. (By Mr. Hrones) They had

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1 Q. And then what did you do?

2 A. I walked over to Mr. Lacy.

3 Q. Why did you do that?

4 A. I saw him pushing the -- Juan's  
5 hand from the butt area when Juan was patting him  
6 down.

7 Q. Juan was patting him down?

8 A. Yes, sir.

9 Q. I thought you said this was a  
10 threshold inquiry.

11 A. It was, sir.

12 Q. But he was patting him down?

13 A. Yes, he was, sir.

14 Q. What did you do then?

15 A. I walked over.

16 Q. And what did you say?

17 A. I told Mario to calm down.

18 Q. And what did Mario say?

19 A. He calmed down.

20 Q. What did you do then?

21 A. I stood there.

22 Q. And then what happened?

23 A. They finished talking to him,  
24 patting him down. It was -- Sergeant Feeney came

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1 over. Moses Acloque came over.

2 Q. Who's Sergeant Feeney?

3 A. The sergeant.

4 Q. Was he in charge?

5 A. Yes, he was.

6 Q. He came over?

7 A. Yes, he did.

8 Q. Who else came over?

9 A. Moses Acloque.

10 Q. How many officers were there at  
11 that time?

12 A. Like maybe four, five. Five of us.

13 Q. The two that stopped him  
14 originally, you --

15 A. Uh-huh.

16 Q. -- Feeney --

17 A. Uh-huh.

18 Q. -- and who else?

19 A. Moses Acloque.

20 Q. And are they all part of the same  
21 drug unit?

22 A. Yes, they are.

23 Q. Under Feeney's control?

24 A. Half under Feeney's control, half

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1           Q.       Seoane was the one that checked the  
2           pockets?

3           A.       Yes.

4           Q.       Did he check any other spots?

5           A.       Jay Broderick checked the  
6           briefcase.

7           Q.       He had a briefcase?

8           A.       Yes, he did.

9           Q.       And did he find anything in the  
10          briefcase?

11          A.       No, sir.

12          Q.       Did Mario say anything during this  
13          time period?

14          A.       He said why are you all bothering  
15          me for.

16          Q.       What did you guys say, or was there  
17          anyone who responded?

18          A.       I don't remember.

19          Q.       Did anyone ask him about whether he  
20          sold to the undercover agent?

21          A.       Not that I remember.

22          Q.       Did you see that undercover person  
23          again that evening?

24          A.       I didn't.

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1           Q.           While you were on the scene with  
2 Mario and people were searching him, did anyone  
3 else come on the scene?

4           MR. HRONES: Wait. Wait. Mario,  
5 he just can say what he wants. Listen,  
6 Mario. You'll get your chance. Just  
7 listen. Okay? We'll talk about it.  
8 Mario, just relax. Would you be quiet,  
9 Mario? Mario, do you want to leave here  
10 now? You're not allowed to do that. Do  
11 you understand that? Do you understand  
12 that, Mario? Do you want to leave?

13                       Would you be quiet? You will  
14 get your chance. Be quiet, Mario. Will  
15 you? Do you understand? You take notes  
16 and listen and you just -- okay? Okay,  
17 Mario? Can you control yourself, or do you  
18 want to leave?

19           Q.           (By Mr. Hrones) So what happened  
20 at that point after he'd been searched?

21           A.           During the search couple of times,  
22 Juan Seoane went to pat his rear area. He kind  
23 of, like, turned. I observed Mario turn away  
24 from him. So after --



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1 Q. Jay who?

2 A. Jay Broderick.

3 Q. So you're saying he went to the car  
4 to get an evidence bag?

5 A. Yes, sir.

6 Q. And what happened then?

7 A. When he came back, Mario stopped  
8 like he was -- he was going to go to the back of  
9 the pants, but he didn't. Two or three times he  
10 -- like he was motioning. He didn't go back  
11 there. He didn't reach into his pants at all.

12 Q. Right. Okay. What happened then?

13 A. At which time I said to him stop  
14 messing around, give it to us so we can get out  
15 of here.

16 Q. So you thought he had drugs on him?

17 A. I did.

18 Q. And you wanted those drugs.

19 A. Yes, sir.

20 Q. So what happened then?

21 A. At which time Sergeant Feeney said  
22 if you think he's got something back there, check  
23 him.

24 Q. And what did you interpret that to

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1 **mean?**

2 A. Check the back of his pants around  
3 the waistband and back of his pants area for  
4 drugs.

5 Q. Feeney was giving you authority  
6 to --

7 A. Yes, sir.

8 Q. -- to search?

9 A. Yes, sir.

10 Q. Did you need his authority?

11 A. He was my supervisor, sir.

12 Q. So what did you do at that point?

13 A. I said to him -- I said to Jay you  
14 got gloves. I said to all the guys anyone got  
15 gloves. No one had gloves. I said to him give  
16 me that bag you had in your hand.

17 Q. Do you normally have gloves?

18 A. Lot of guys do. Some don't.

19 Q. Why do you have gloves?

20 A. People who are disgusting, people  
21 who have AIDS, people sweating.

22 Q. When you're doing what type of  
23 search?

24 A. Any kind of search, sir. Even

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1     **you?**

2             A.       No, sir. I didn't have any gloves.

3             Q.       He didn't go to the car to get the  
4     **evidence bag to use for that purpose?**

5             A.       No, sir. He did not.

6             Q.       And you just thought I'll use it  
7     **for the purpose of protecting myself when I**  
8     **search Mario?**

9             A.       Correct, sir.

10            Q.       And what exactly did you do in  
11     **terms of that search?**

12            A.       I put the bag on. It came right to  
13     here on my hand. It was too small. I put it  
14     right to here on my hand. I pulled his pants  
15     back, looked, told Sergeant Feeney nothing there,  
16     let it go. It snapped by accident.

17            Q.       You pulled his underpants out?

18            A.       He had sweatpants.

19            Q.       And his underpants?

20            A.       Yes, sir.

21            Q.       So you could see his rear end?

22            A.       Yes, sir.

23            Q.       And did you see anything?

24            A.       No, sir.

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1 Q. And did you realize that you were  
2 violating police regulations by doing that?

3 MR. CHERNETSKY: Objection.

4 THE WITNESS: No, sir.

5 Q. (By Mr. Hrones) Do you realize  
6 this was a strip search as defined by the Boston  
7 Police Regulations?

8 A. No, it's not.

9 Q. How do you define a strip search?

10 A. Check his scrotum area, open his  
11 butt cheeks. That's a strip search.

12 Q. When you actually open the butt  
13 cheeks?

14 A. Yes, sir.

15 Q. You believe in order to be a strip  
16 search, you actually have to have his buttocks  
17 pulled apart?

18 A. Yes, sir. And also have his  
19 clothes pulled down or off.

20 Q. Do you know how it's defined in the  
21 regulation?

22 A. I do.

23 Q. And do you happen to know that  
24 under oath, Sergeant Feeney testified that what

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1 you did was a strip search?

2 A. I don't know what Sergeant Feeney  
3 testified to. I wasn't there.

4 Q. It's your position it wasn't a  
5 strip search?

6 A. Not to myself it wasn't, sir.

7 Q. But you say you're familiar with  
8 the regulations.

9 A. I am, sir.

10 Q. And do you agree that a strip  
11 search is defined as follows: The removal or  
12 rearrangement of some or so -- all of the  
13 arrested person's clothing so as to permit a  
14 visual inspection of the breast, buttocks, anus  
15 or genitalia?

16 A. Correct.

17 Q. This doesn't include touching or  
18 prodding.

19 A. Correct.

20 Q. You pulled his pants out and his  
21 underpants out so you actually saw his ear end.

22 A. Correct, sir.

23 Q. And under the definition, that is a  
24 strip search.

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1 A. Correct, sir.

2 Q. And you didn't do a strip search  
3 that night?

4 A. According to that, I did.

5 Q. That's not authorized, is it?  
6 Outside of a police station or pursuant to a  
7 warrant, there's no authority to do a strip  
8 search, is there?

9 A. Correct, sir.

10 Q. So you violated regulations that  
11 night.

12 A. No, sir. I feel I did not.

13 Q. But you did a strip search.

14 A. Correct, sir.

15 MR. HRONES: No. No. Listen,  
16 we'll talk -- we'll get a chance. I can  
17 ask him questions but -- take notes. Okay?  
18 You'll get your chance. Just relax, Mario.  
19 You have a lawyer. I'm representing your  
20 rights. This is not the time to -- this is  
21 like a court of law. You've got to be  
22 quiet.

23 Q. (By Mr. Hrones) And the regulation  
24 says police officers are prohibited from

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1 Q. On how many occasions?

2 A. Maybe three or four times.

3 Q. And what type of searches were  
4 those?

5 A. You get drugs.

6 Q. No. But --

7 A. You get drugs.

8 Q. Were they strip searches?

9 A. I felt drugs, took them out.

10 Q. I'm not talking about that. I'm  
11 talking about other occasions --

12 A. That was before --

13 Q. That you pulled --

14 A. -- to get drugs out. I felt drugs.  
15 I took them out.

16 Q. Here you took his pants, opened it  
17 up without feeling anything. Was that the first  
18 time you'd done that?

19 A. Maybe the second or third time.

20 Q. What were the other occasions you  
21 did that?

22 A. I don't remember exactly. I just  
23 know I have.

24 Q. What did you do on the other

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1 MR. CHERNETSKY: Objection.

2 THE WITNESS: He didn't see drugs  
3 exchanged.

4 Q. (By Mr. Hrones) He saw something  
5 exchanged.

6 A. Money. That's it. Just gave him  
7 money. He walked to the dumpster, never got back  
8 to her.

9 Q. I see. There wasn't an exchange at  
10 that point?

11 A. That's what I said.

12 Q. Now, who was present when you  
13 looked down his pants?

14 A. Sergeant Feeney, Moses Acloque, Jay  
15 Broderick, Juan Seoane and myself.

16 Q. When you do that type of search,  
17 it's supposed to be somewhat private, is it not?

18 A. Correct, sir.

19 Q. There were five officers there.

20 A. Standing around him. Yes, sir.

21 Q. Why didn't you make an effort to  
22 make it private?

23 A. We did.

24 Q. How was it made private?

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1 Q. Where were you positioned when you  
2 did the search?

3 A. Right here.

4 Q. Were you in the alley?

5 A. Yes, sir. By the garage wall.

6 Q. Can you point out where you were?

7 A. (Witness complying)

8 Q. So you're almost out on the street?

9 A. No, sir. In the alley.

10 Q. Barely in the alley by a foot or  
11 two.

12 A. Yes, sir.

13 MR. CHERNETSKY: Is that an H?

14 THE WITNESS: No, sir. It's a  
15 star.

16 MR. CHERNETSKY: So the X is  
17 showing --

18 Q. (By Mr. Hrones) The X is -- the H  
19 is -- the HH, we'll say, is where you were --

20 A. Uh-huh.

21 Q. -- when you searched him?

22 A. Yes, sir.

23 Q. And where was your supervisor?

24 A. Right here where the first H -- X

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